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Atty. Dkt. No. 084335-0129

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hitoshi Kiyoi et al.
Title: METHOD FOR SCREENING CANDIDATE
COMPOUNDS FOR ANTITUMOR DRUG
Appl. No.: 09/763,175
Filing Date: 05/30/2001
Examiner: Susan Ungar
Art Unit: 1642

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement set forth in the August 25, 2004, Applicants hereby provisionally elect Group I, Claims 1, 5-9, and 11 and FDC-P1, for examination, with traverse for the reasons as set forth below.

The PCT rules of "unity of invention" should be applied to this application. Herein, the Examiner purports to apply the proper test, citing to PCT Rule 13.1, "unity of invention," and the principle of shared "special technical features." However, the Examiner has provided no true analysis of the claims. Rather, she summarily concludes that the claims can be divided into different groups, without providing any specific reasons for denying the unity of the claimed invention. This is not the test for unity of invention. The question is do the claims share the "same or corresponding special technical features." In this case, the use of animal cells expressing FLT3/ITD (step (a) of claims 1-4) is the special technical feature that distinguishes the present invention from the prior art. This feature is covered and shared by claims 1 to 4 and their dependent claims. In conclusion, applicants respectfully submit the restriction requirement be withdrawn.

Applicants await the first Office Action on the merits of the application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 CFR §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

Respectfully submitted,

Date September 24, 2004

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